IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5332 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HI-POWER MAILING SERVICE

Versus

DEPARTMENT OF POSTS - INDIA

Appearance:

1. Special Civil Application No. 5332 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MS PJ DAVAWALA for Respondent No. 1

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 19/06/2003

ORAL JUDGEMENT

1. Rule. Ms.P.J.Davawala waives service of notice of rule on behalf of the respondent. With the consent of

the parties, the matter is taken for final hearing today.

2. The present petition arises against the order dated 3-4-2003 passed by Respondent, whereby the licence of the petitioner for operating franking machine has been cancelled.

3. I have heard Mr.Prajapati, learned Counsel for the petitioner and Ms.Davawala, learned Counsel for the respondent.

4. The contention raised on behalf of the petitioner is that there are grounds in the show-cause notice which have been properly explained by the petitioner. However, the respondent, at the time of passing the final order dated 3-4-2003, has based the decision on certain aspects and grounds which were not there in the show-cause notice and, therefore, Mr.Prajapati submitted that the order would be vitiated as no opportunity of hearing has been given to the petitioner for explaining the additional grounds.

5. On behalf of the respondent, Ms.Davawala has submitted, inter alia, that as per the rules reasons are not required to be mentioned for the cancellation of the licence since it is one of the conditions and she submitted that the three grounds were there in the show-cause notice which were considered and in addition that to, mischief with the franking machine as narrated in para (3) of the impugned order was also considered and she submitted that it cannot be said that the order is vitiated. However, she also declared upon the instructions that the respondent has no objection in issuing a fresh show-cause notice and to consider the matter again with a view to see that the principles of natural justice are fully complied with.

6. Considering the above, I am of the view that the contention raised by Ms.Davawal on behalf of the respondents that no reasons are required to be recorded while cancelling the licence is ill-founded. The State or any agency of the State within the meaning of Article 12 of the Constitution of India, may be functioning under the contractual field or in discharge of the statutory duty, has to act reasonably and in a fair play manner. Merely because rule provides, it cannot be said that no reasons whatsoever are required to be mentioned. In scheme of fair play, it is to be read as an in-built mechanism for exercise of powers by all the authorities. Whenever the powers are coupled with the public duty,

such powers are to be exercised in a fair manner or even otherwise also it is expected for all the authorities to exercise the power in reasonable and fair manner. Therefore, it cannot be accepted that no reasons are required to be recorded for taking decision of cancellation of the licence, more particularly when licence came to be granted in discharge of statutory powers and, therefore, the said contention of Ms.Davawala fails.

7. So far as the contention raised on behalf of the respondent that there were three grounds in the show-cause notice and additional material of the mischief of franking machine is referred to and, therefore, it can be said that the opportunity is given, in my view, also cannot be sustained. There is a considerable force in the contention raised on behalf of the petitioner that certain grounds which are mentioned or which are also part of the basis of the impugned order are not reflected in the show-cause notice and, therefore, it is apparent that no opportunity is given to the petitioner to meet with such grounds before final decision is taken by the authority. In my view, the law is settled for observation of the principles of natural justice, that all the ground must be intimated to the party concerned on the basis of which the adverse order is to be passed. In the present case, since there are additional aspects, more particularly as that of mischief of franking machine as narrated in para (3) of the impugned order were not mentioned in the show-cause notice, it can be said that the petitioner was not given opportunity and hence the decision is vitiated.

8. However, since the learned Counsel appearing for the respondent has fairly submitted that respondents have no objection in issuing show-cause notice and to give opportunity to the petitioner, I am not further examining the aforesaid aspects and thereby to consider the conduct and the action of respondent. The learned Counsel for the respondent submitted, inter alia, that when the petition was filed the licence was already cancelled and, therefore, she submitted that until the procedure of issuing fresh show-cause notice and of giving opportunity and of rendering decision is over, the status-quo as prevailing may be continued, even if this Court finds that there is breach of principles of natural justice and a fresh show-cause notice is required to be issued.

9. On behalf of the petitioner, Mr.Prajapati has objected by submitting that as such the petitioner was running the business and if the decision for cancellation

of the licence is found to be inappropriate by the Court, may be on account of breach of principles of natural justice or otherwise petitioner should be allowed to continue with the licence and, therefore, he submitted that even if the matter is ordered to be considered by issuing a fresh show-cause notice, till the decision is rendered, the petitioner may be allowed to continue with the business pursuant to the licence.

10. Considering the peculiar facts and circumstances of the case that when the petitioner filed the petition the licence was already cancelled and such cancellation has operated for a period of about more than two months and no interim order came to be passed by this Court when the petition was entertained, and when the licence was already cancelled, and when I find that in view of principles of natural justice the matter will have to be reconsidered, the life should not be given to the licence at this stage and the judicial discretion demands that the status-quo may be continued for some time and respondents may be directed to decide the matter afresh within a stipulated time bound programme. The aforesaid, in my view, would meet with the ends of justice.

11. In view of the aforesaid, I find that the following directions shall meet with the ends of justice:

11.1 The impugned order dated 3-4-2003 passed by the respondent, copy whereof is produced at Annexure "L", is quashed and set aside with further directions that the respondent shall issue a fresh show-cause notice to the petitioner for cancellation of the licence within a period of one week from today.

11.2 The petitioner shall submit the reply within a period of 10 days from the date of receipt of such show-cause notice.

11.3 Immediately after the reply if the petitioner demands for personal hearing, the concerned respondent shall give opportunity of hearing to the petitioner within 10 days thereafter.

11.4 Respondent shall render the decision within 10 days thereafter. It is clarified that the matter will be considered afresh in accordance with law.

12. The petition is allowed in terms of the aforesaid directions. Rule made absolute accordingly. No costs.

19-6-2003 (Jayant Patel, J.)

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